

ROUNDTABLE DISCUSSION:
SENTENCING PRACTICES FOR FIRST- AND
SECOND-DEGREE CONTROLLED SUBSTANCE
OFFENSES

Minnesota Sentencing Guidelines Commission

October 15, 2013

Agenda

1. Introductions
2. Data Presentation
3. Discussion
4. Public Input

Why Talk About Controlled Substances?

- One of the primary functions of the Sentencing Guidelines Commission is to monitor sentencing practices.
- On average, about 75% of all felony offenders sentenced receive the presumptive Guidelines sentence.
- But there are a few offenses for which offenders are receiving the presumptive Guidelines sentence less than half of the time, among them, first- and second-degree controlled substance offenses.

Guidelines Purpose

The purpose of the Sentencing Guidelines is to establish rational and consistent sentencing standards that reduce sentencing disparity and ensure that the sanctions imposed for felony convictions are proportional to the severity of the conviction offense and the offender's criminal history. Equity in sentencing requires that: (a) convicted felons with similar relevant sentencing criteria should receive similar sanctions; and (b) convicted felons with relevant sentencing criteria substantially different from a typical case should receive different sanctions.

Sentencing Grid

The horizontal axis represents the offender's total criminal history score.



The vertical axis represents the severity level of the current offense. Felonies are currently ranked from 1-11. The offenses listed on the grid are examples of common offenses at that severity level.

Each individual cell on the grid contains the *presumptive duration* of a sentence in months. For cells above the disposition line, a range is also given. It is important to use the grid in effect when the current offense is committed so that the correct range is used.

4.A. Sentencing Guidelines Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

		CRIMINAL HISTORY SCORE						
SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in <i>italics</i>)		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree</i> (<i>intentional murder; drive-by-shootings</i>)	11	306 <i>261-367</i>	326 <i>278-391</i>	346 <i>295-415</i>	366 <i>312-439</i>	386 <i>329-463</i>	406 <i>346-480²</i>	426 <i>363-480²</i>
<i>Murder, 3rd Degree</i> (<i>unintentional murder</i>)	10	150 <i>128-180</i>	165 <i>141-198</i>	180 <i>153-216</i>	195 <i>166-234</i>	210 <i>179-252</i>	225 <i>192-270</i>	240 <i>204-288</i>
<i>Assault, 1st Degree</i> <i>Controlled Substance Crime, 1st Degree</i>	9	86 <i>74-103</i>	98 <i>84-117</i>	110 <i>94-132</i>	122 <i>104-146</i>	134 <i>114-160</i>	146 <i>125-175</i>	158 <i>135-189</i>
<i>Aggravated Robbery, 1st Degree</i> <i>Controlled Substance Crime, 2nd Degree</i>	8	48 <i>41-57</i>	58 <i>50-69</i>	68 <i>58-81</i>	78 <i>67-93</i>	88 <i>75-105</i>	98 <i>84-117</i>	108 <i>92-129</i>
<i>Felony DWI</i>	7	36	42	48	54 <i>46-64</i>	60 <i>51-72</i>	66 <i>57-79</i>	72 <i>62-84²</i>
<i>Controlled Substance Crime, 3rd Degree</i>	6	21	27	33	39 <i>34-46</i>	45 <i>39-54</i>	51 <i>44-61</i>	57 <i>49-68</i>
<i>Residential Burglary</i> <i>Simple Robbery</i>	5	18	23	28	33 <i>29-39</i>	39 <i>33-45</i>	43 <i>37-51</i>	48 <i>41-57</i>
<i>Nonresidential Burglary</i>	4	12 ¹	15	18	21	24 <i>21-28</i>	27 <i>23-32</i>	30 <i>26-36</i>
<i>Theft Crimes (Over \$5,000)</i>	3	12 ¹	13	15	17	19 <i>17-22</i>	21 <i>18-25</i>	23 <i>20-27</i>
<i>Theft Crimes (\$5,000 or less)</i> <i>Check Forgery (\$251-\$2,500)</i>	2	12 ¹	12 ¹	13	15	17	19	21 <i>18-25</i>
<i>Sale of Simulated</i> <i>Controlled Substance</i>	1	12 ¹	12 ¹	12 ¹	13	15	17	19 <i>17-22</i>

-  Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the Guidelines under Minn. Stat. § 609.185. See Guidelines section 2.E. Mandatory Sentences, for policies regarding those sentences controlled by law.
-  Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in the shaded area of the Grid always carry a presumptive commitment to state prison. (Guidelines sections 2.C. Presumptive Sentence and 2.E. Mandatory Sentences.)

¹ 12¹=One year and one day

² Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. Guidelines section 2.C.1-2. Presumptive Sentence.

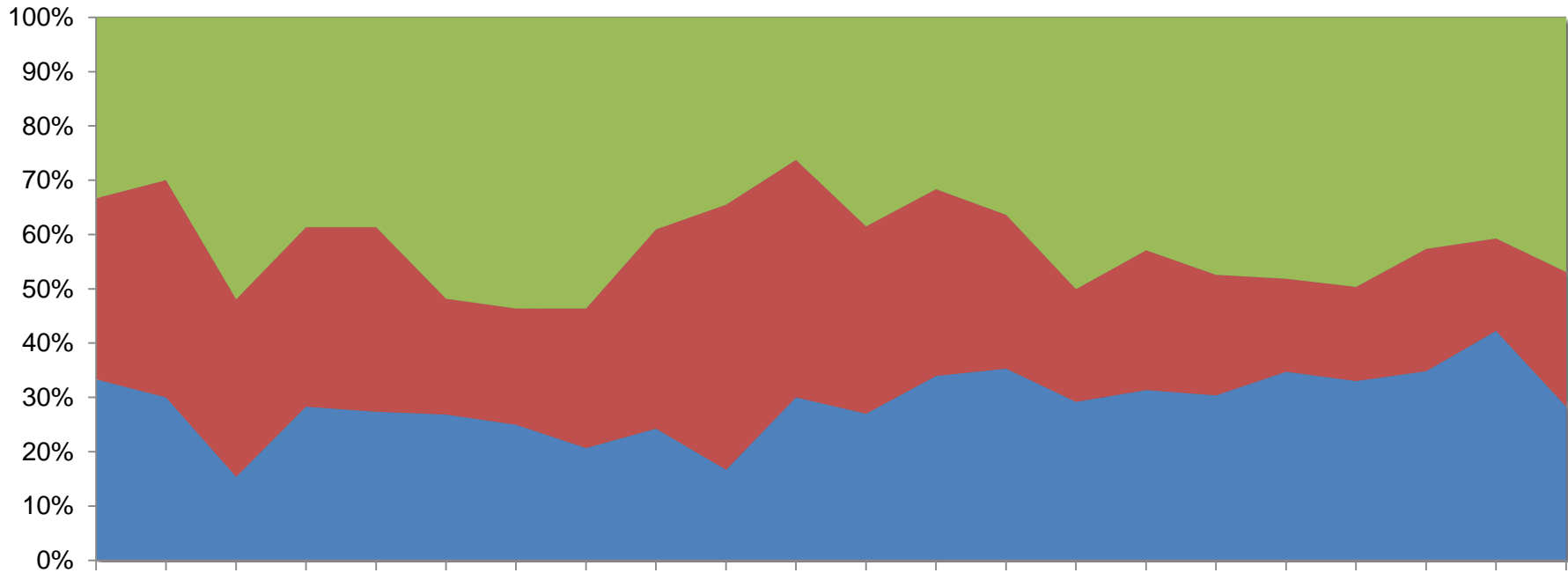
Presumptive Sentences

“Presumptive sentences” are those sentences provided on the Sentencing Guidelines Grids. They are presumptive because they are presumed to be appropriate for all typical cases sharing criminal history and offense severity characteristics.

Role of Departures

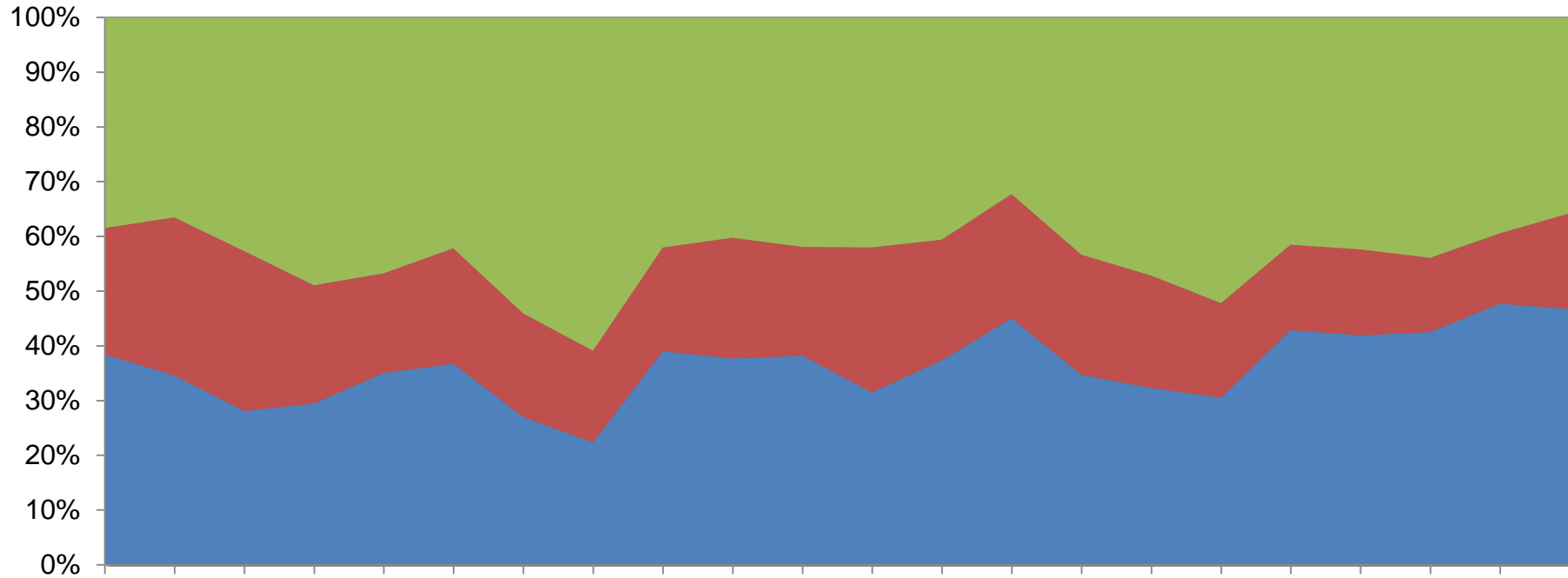
The sentences ranges provided in the Grids are presumed to be appropriate for the crimes to which they apply. The court must pronounce a sentence within the applicable range unless there exists identifiable, substantial, and compelling circumstances to support a sentence outside the appropriate range on the applicable Grid.

Departure Rates Over Time: First-Degree Controlled Substance Offenses Sentenced 1990-2011



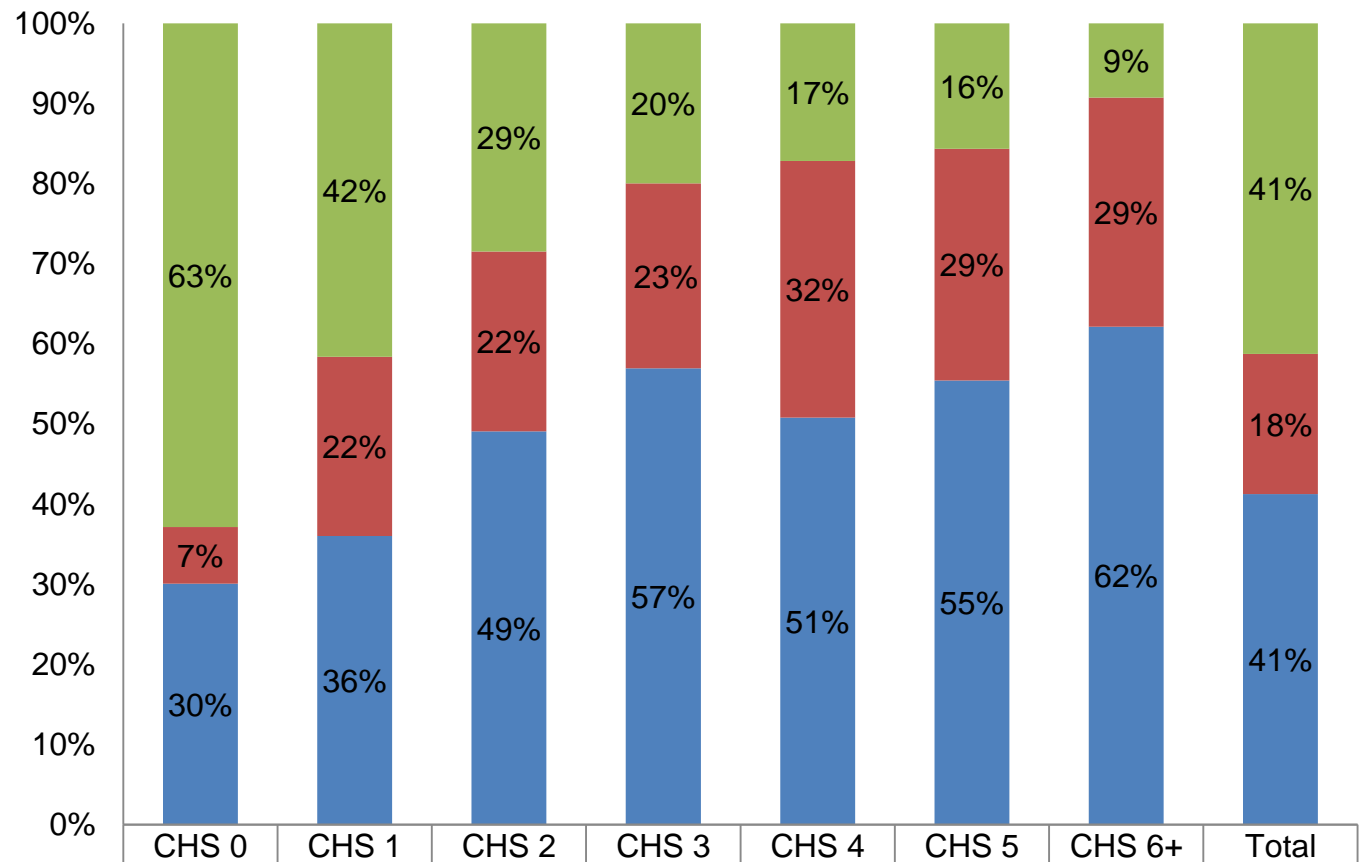
Year	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Prob.	33%	30%	52%	39%	39%	52%	54%	54%	39%	35%	26%	39%	32%	36%	50%	43%	47%	48%	50%	43%	41%	47%
Prison (Less Time)	33%	40%	33%	33%	34%	21%	21%	26%	37%	49%	44%	35%	34%	28%	21%	26%	22%	17%	17%	23%	17%	25%
Prison	33%	30%	15%	28%	27%	27%	25%	21%	24%	17%	30%	27%	34%	35%	29%	31%	30%	35%	33%	35%	42%	28%

Departure Rates Over Time: Second-Degree Controlled Substance Offenses Sentenced 1990-2011



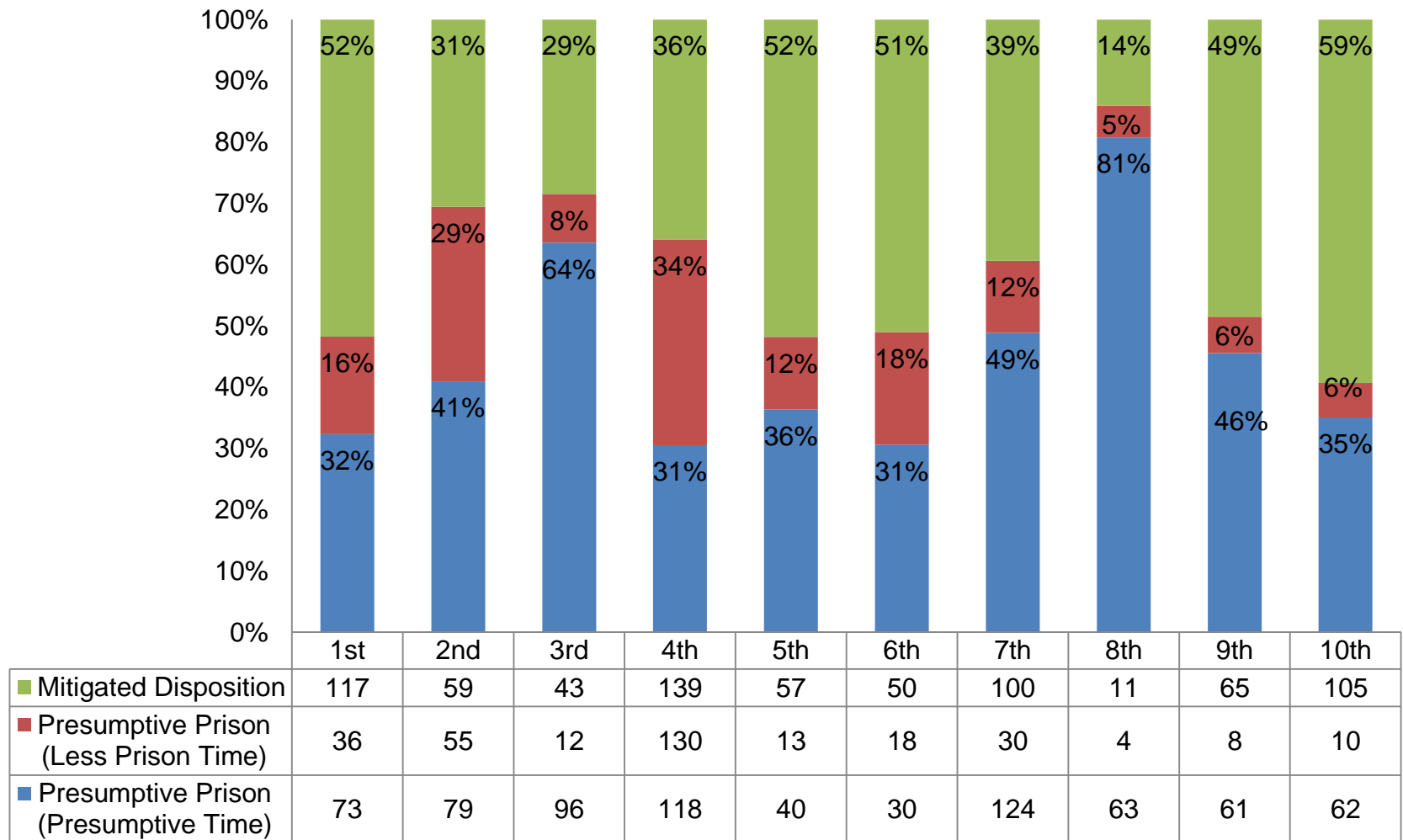
Year	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Prob.	39%	37%	43%	49%	47%	42%	54%	61%	42%	40%	42%	42%	41%	32%	43%	47%	52%	42%	42%	44%	39%	36%
Prison (Less Time)	23%	29%	29%	22%	18%	21%	19%	17%	19%	22%	20%	27%	22%	23%	22%	21%	17%	16%	16%	14%	13%	18%
Prison	39%	35%	28%	30%	35%	37%	27%	22%	39%	38%	38%	32%	37%	45%	35%	32%	31%	43%	42%	43%	48%	47%

Departure Rates by Criminal History Score (CHS): First- and Second-Degree Offenders (2009-2011 Combined Data)



Mitigated Disposition	479	119	61	39	22	13	13	746
Prison (Less Time)	54	64	48	45	41	24	40	316
Prison (Presumptive Time)	229	103	105	111	65	46	87	746

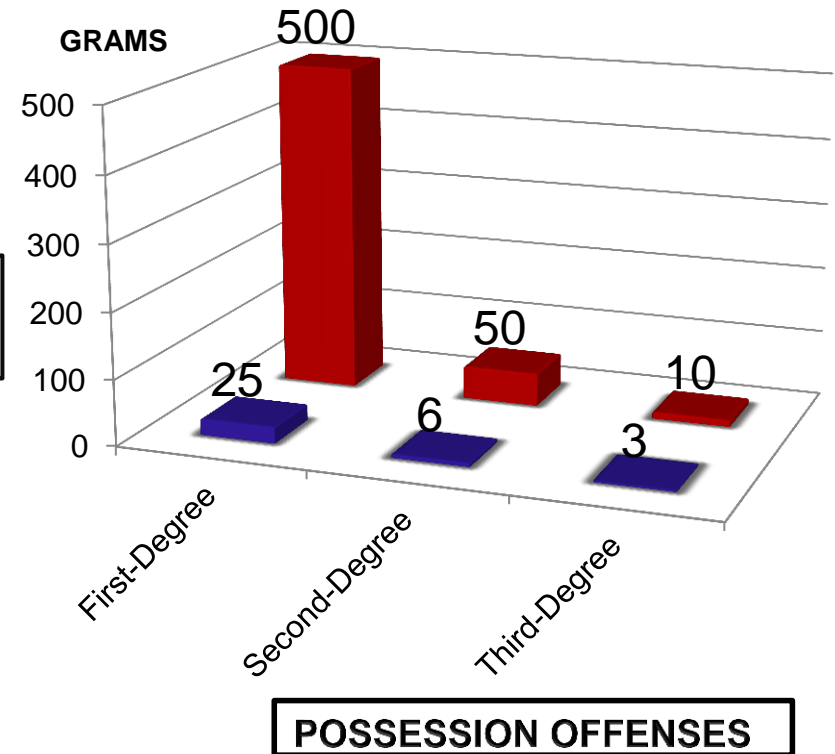
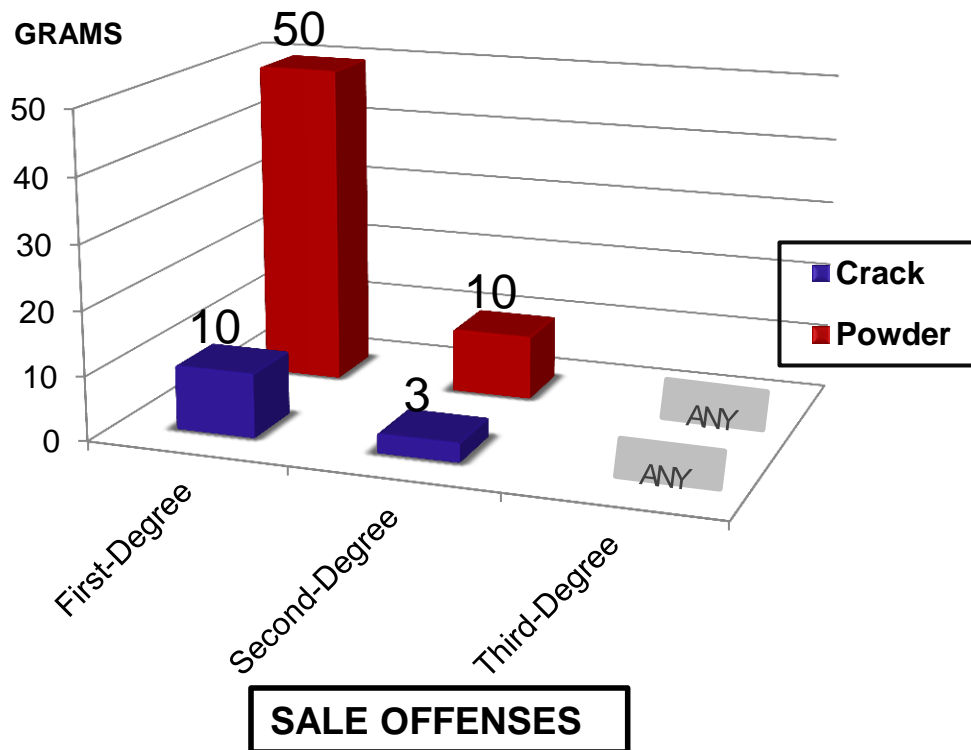
Departure Rates by Judicial District: First- and Second-Degree Drug Offenders (2009-2011 Combined Data)



Controlled Substance Offenses: 1989 Statutory Changes

- 5 degrees established with possession and sale offenses at each degree.
- Separate thresholds established for powder and crack cocaine.

1989 Minn. Laws ch. 290, art. 3.



Controlled Substance Offenses Legislative Changes: 1991-1992

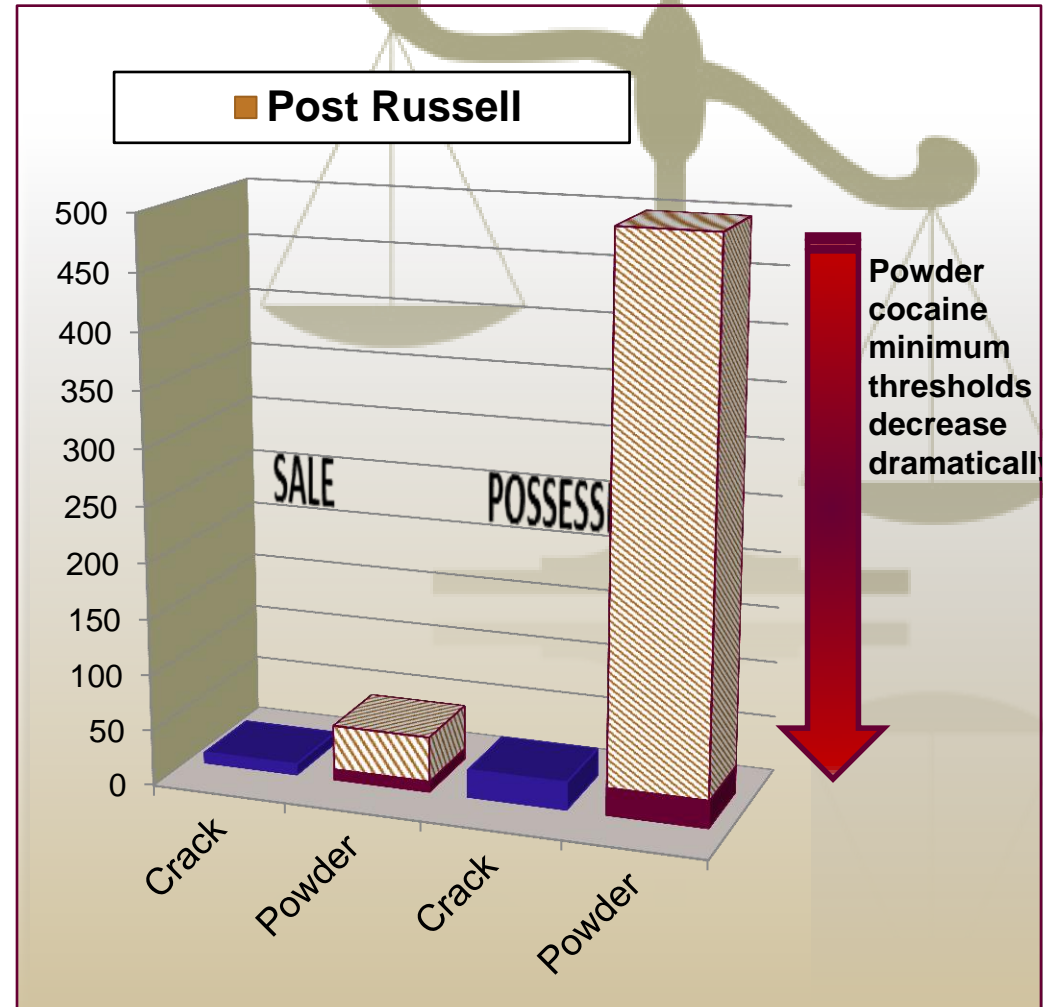
1991

- State v. Russell: MN Supreme Court determines that the disparate treatment of crack and powder cocaine is unconstitutional.

1992

1992 Minn. Laws ch. 359.

- Legislature sets thresholds for all cocaine offenses to be equal to the previous crack thresholds, thereby increasing the penalties for powder offenses.



Controlled Substance Offenses Legislative Changes: 1997-1990

1997

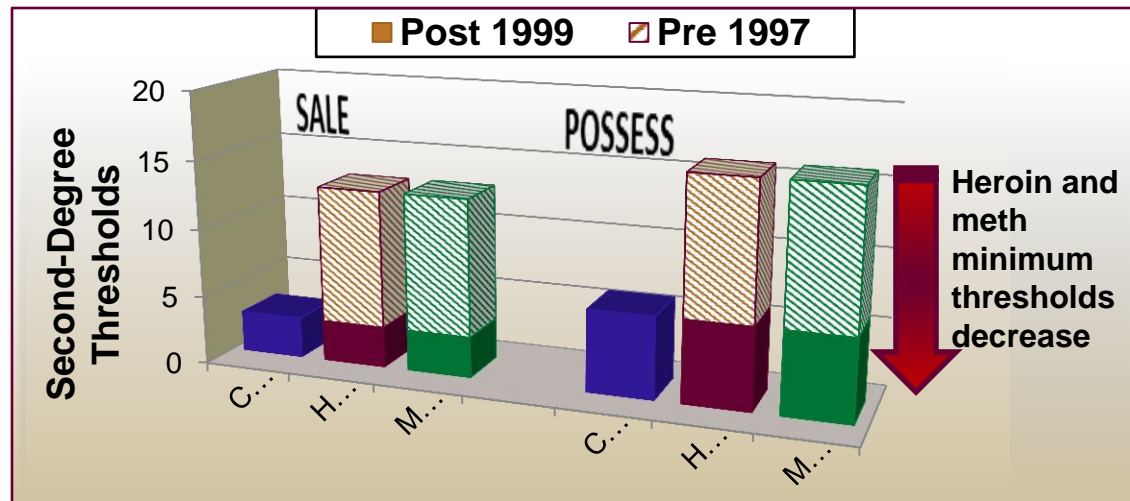
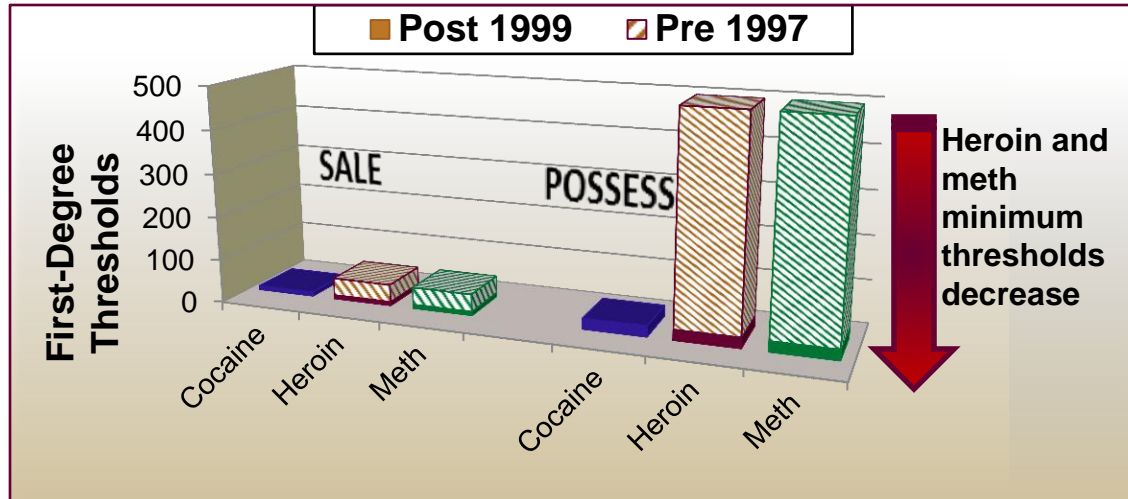
1997 Minn. Laws ch. 239, art. 4, §§ 5-6.

- Thresholds for heroin set to equal those for cocaine.
- Offense rankings were not changed.

1999

1998 Minn. Laws ch. 367, art. 4, §§ 1-3.

- Thresholds for methamphetamine set to equal those for cocaine.
- Offense rankings were not changed.
- Manufacturing of any amount of methamphetamine became a 1st degree offense.



Comparisons and Research Questions

Comparison Groups:

- **Probationers (N=965):** Controlled substance offenders sentenced to probation January 2007 to December 2009
- **Prisoners (N=1224):** Controlled substance offenders released from prison January 2007 to December 2009

Research Questions:

1. Are first- and second-degree controlled substance offenders who are put on probation (given mitigated dispositional departures) different than those who receive prison?
2. How successful are first- and second-degree controlled substance offenders who receive probation compared to those who receive prison? (Success measured by reconviction rates and revocation rates.)

Findings

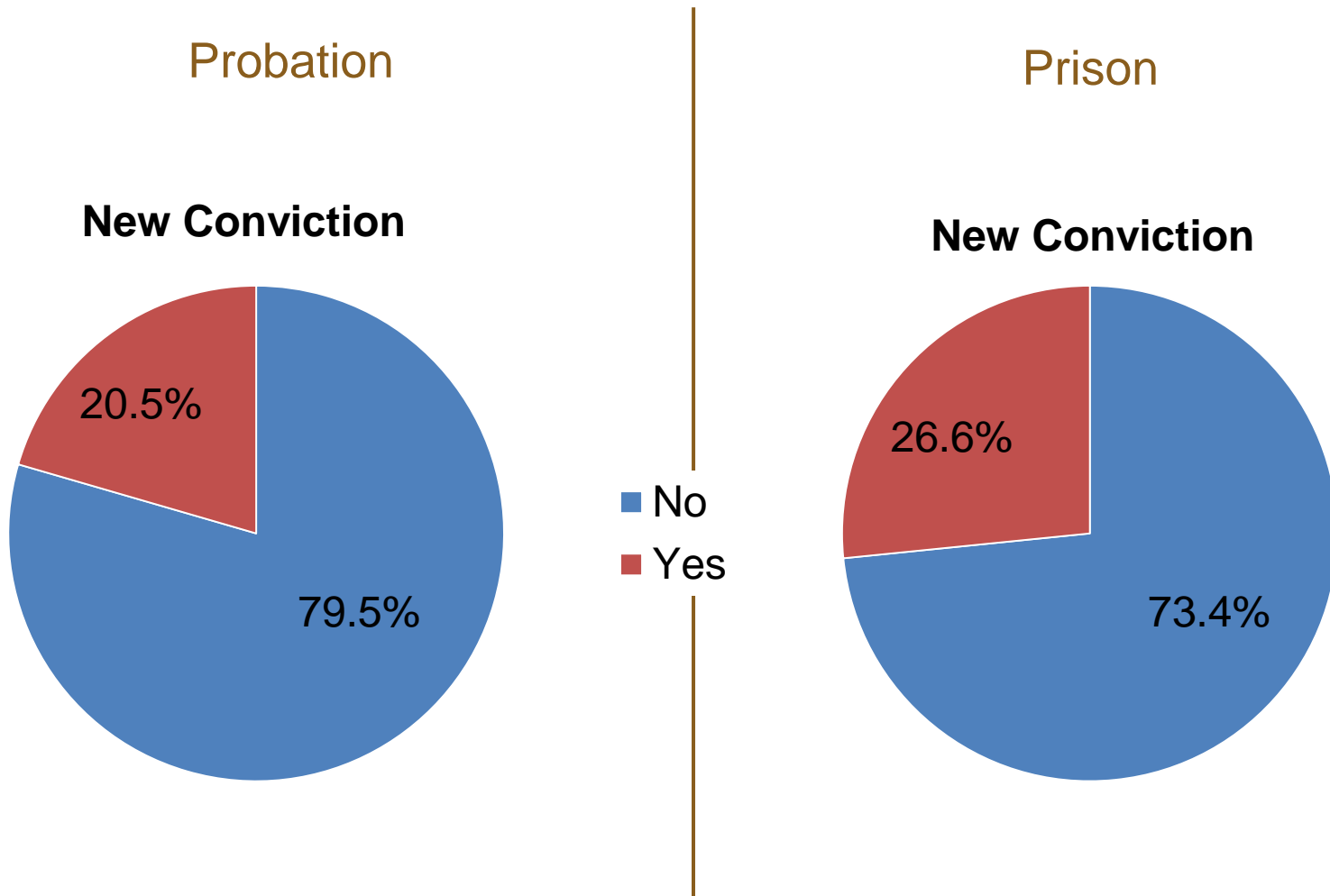
Question 1 – These demographic differences stood out:

- Many more probationers than prisoners had a criminal history score of 0 (61% vs. 36%).
- More prisoners than probationers were from Greater MN (64% vs. 47%).

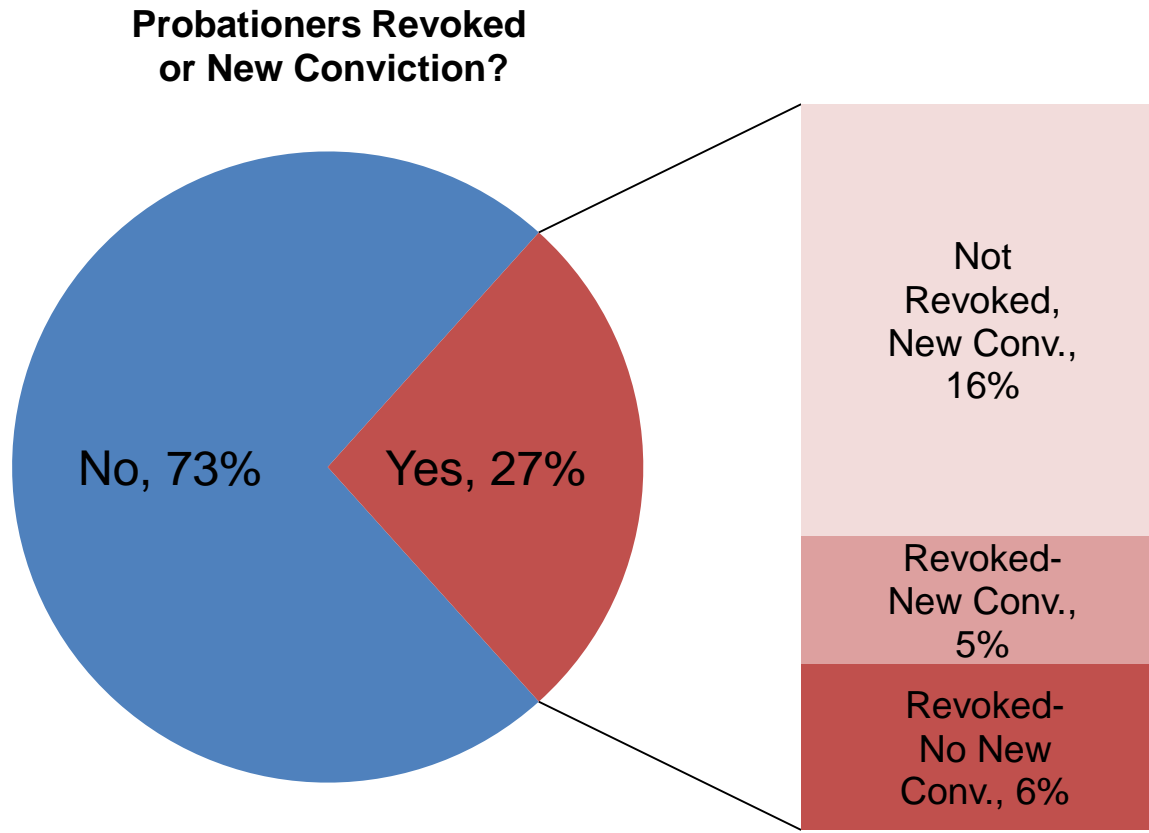
Question 2 – Reconviction rates were as follows:

- The majority of both groups had no new conviction.
- The new conviction rate for probationers was lower than for prisoners (21% vs. 27%).
- When new convictions and revocations are combined as a measure, 27% of probationers were not successful.

New Conviction Rates

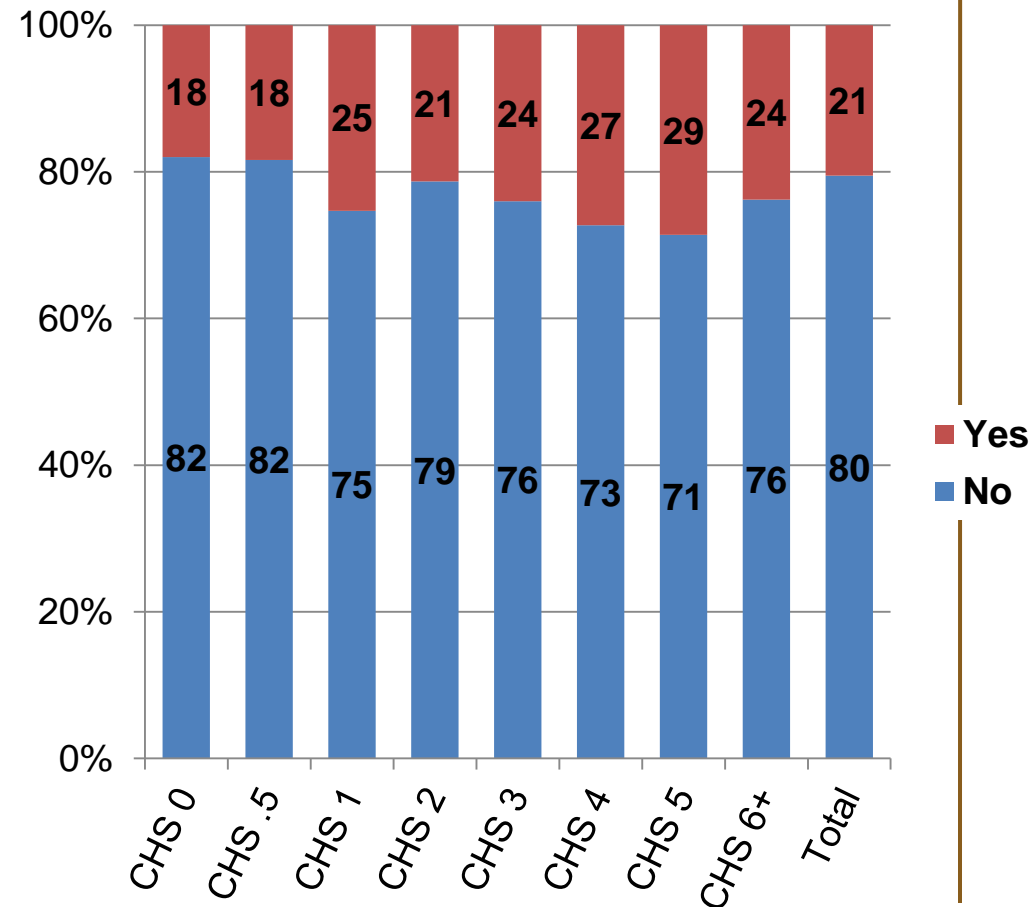


Probationers Only: How many were revoked or had a new Conviction?

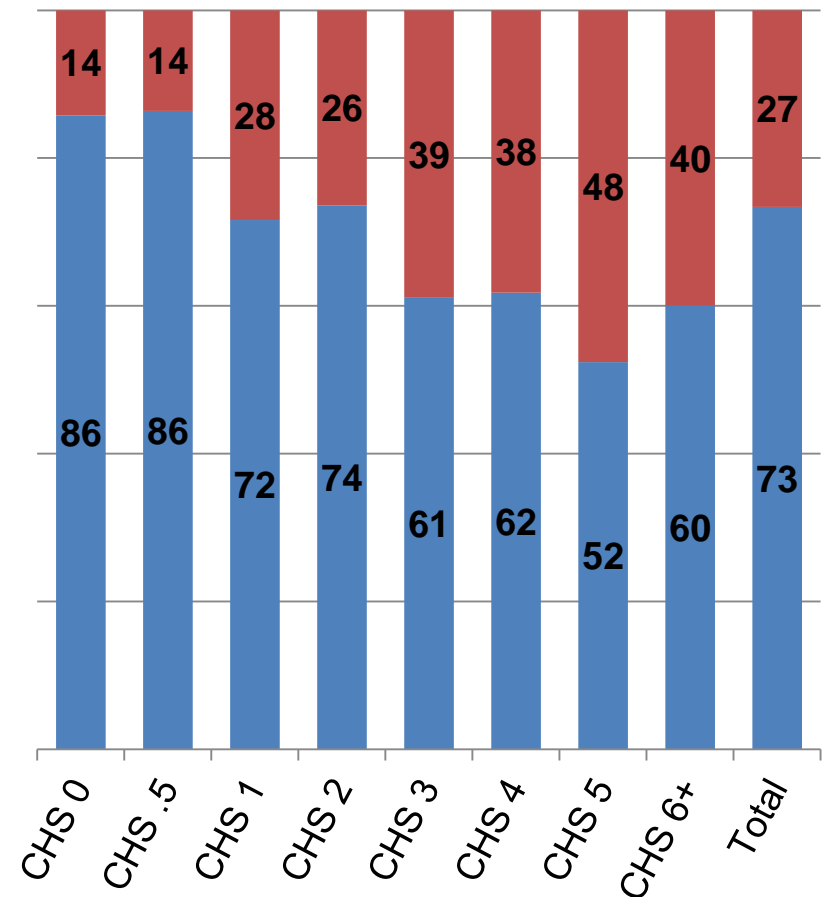


New Conviction Rates by Criminal History Score

Probation

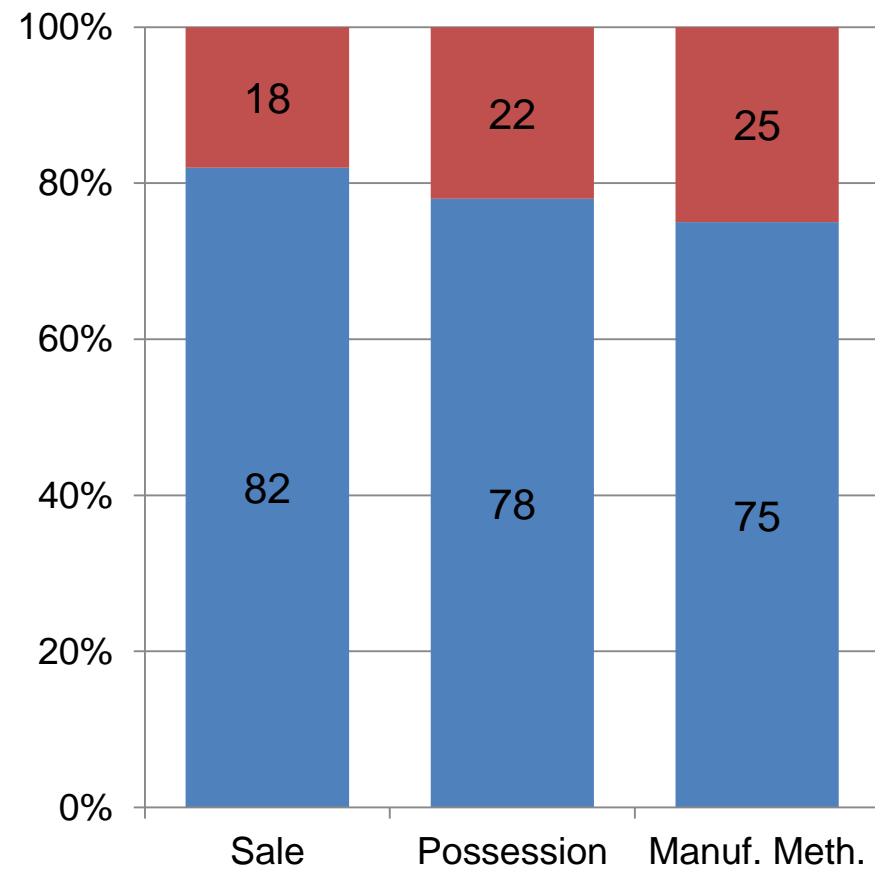


Prison

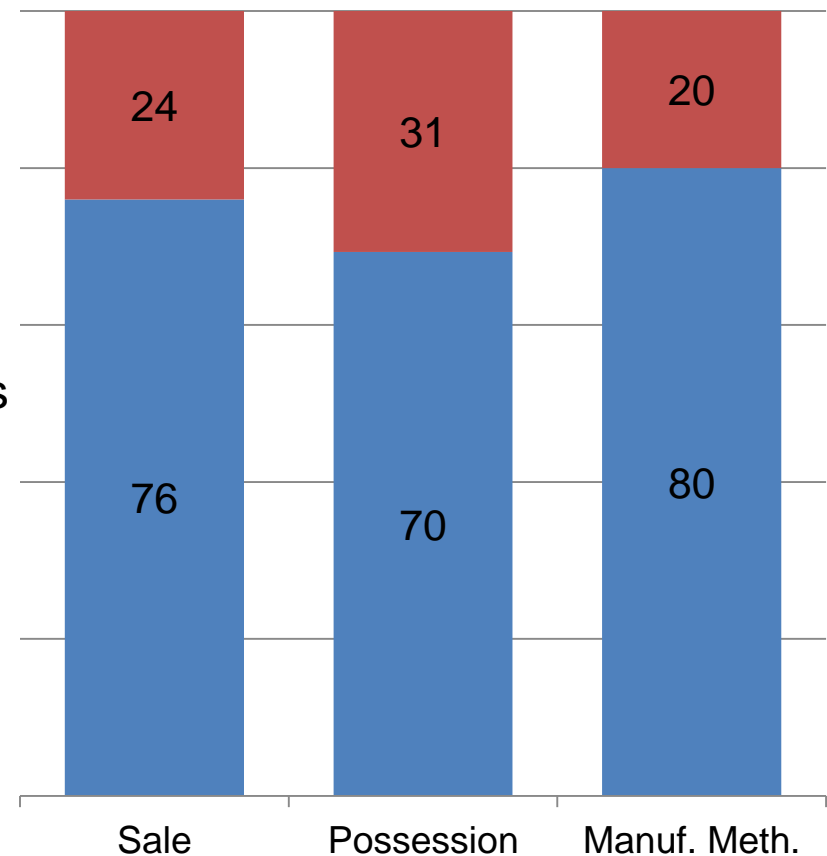


New Conviction Rates by Sale vs. Possession

Probation



Prison



Comparing Presumptive Sentences in Other States

Sentencing Guidelines systems vary greatly from state to state. The comparison states on the following pages were chosen because of these factors:

- Permanent Sentencing Commission
- Parole discretion abolished
- Fully developed Guidelines
- Guidelines are not advisory
- Guidelines enforced by appeals

Comparing Presumptive Sentences: Examples of MN 1st Degree Drug Offense-Sale

Offender Profile for Typical 1st Degree Sale Drug Offender: *Sale or poss. w/intent of 10 or more grams aggregated over a 90-day period*



Offense Sentenced: First-Degree Sale

- 31 yr. old
- White or Hispanic male
- Sentenced in the Metro Area
- Criminal History Score of 0.

Drug

Cocaine or Meth offense
Amount less than 20 Grams

Act





A Confidential Reliable Informant (CRI) was used
Actual sale transaction(s)
Convicted of a first-time drug offense

Other

A gun was not involved, nor were there children present
Most likely sentenced to probation

Example 1

Sale of 19 grams of Cocaine
Criminal History Score of 0
First time drug offense
No weapon involved

State	Presumptive Sentence
 Minnesota	Prison 86 months Range 74-103
 Kansas	Prison 49 months Range 46-51
 Washington	Prison 16 months Range 12-20
 Oregon	Prison 17 months Range 16-18

Comparing Presumptive Sentences: Examples of MN 1st Degree Drug Offense-Possession

Offender Profile for Typical First-Degree Possession Drug Offender: *Possession of 25 or more grams*



Offense Sentenced: First-Degree Possession

- 35 yr. old
- White male
- Sentenced in the Metro Area
- Criminal History score of 0.

Drug

Cocaine or Meth offense
Amount less than 50 Grams

Act





No CRI was used
Originally charged with first-degree possession
Convicted of a first-time drug offense

Other

A gun was not involved, nor were there children present
Most likely sentenced to probation

Example 2

Possess 49 grams of Cocaine
Criminal History Score of 0
First time drug offense
No weapon involved

State	Presumptive Sentence
 Minnesota	Prison 86 months Range 74-103
 Kansas	Probation 11 months Range 10-12
 Washington	Jail 3 months Range 0-6
 Oregon	Probation <91 days jail <180 days supervised

Comparing Presumptive Sentences: Examples of MN 2nd Degree Drug Offense-Sale

Offender Profile for Typical Second-Degree Sale Drug Offender: *Sale or poss. w/ intent of 3 or more grams aggregated over a 90-day period*







Offense Sentenced: Second-Degree Sale

- 32 yr. old
- White male
- Sentenced in the Non-Metro Area
- Criminal History Score of 0 or 1

Drug	Meth offense Amount less than 10 Grams
Act	A CRI was used Actual sale transaction(s) Originally charged with second-degree sale Convicted of a first-time drug offense
Other	A gun was not involved, nor were there children present Most likely sentenced to the presumptive sentence

Example 3

Sale of 9 grams of Meth
Criminal History Score of 1
First time drug offense
No weapon involved

State	Presumptive Sentence
 Minnesota	Prison 58 months Range 50-69
 Kansas	Prison 104 months Range 99-110
 Washington	Prison 16 months Range 12-20
 Oregon	Probation <91 days jail <180 days supervised

Comparing Presumptive Sentences: Examples of MN 2nd Degree Drug Offense-Possession

Offender Profile for Typical Second-Degree Possession Drug Offender: *Possession of 6 or more grams*



Offense Sentenced: Second-Degree Possession

- 34 yr. old
- White male
- Sentenced in the metro area
- Criminal History score of 0 or 1

Drug

Meth offense
Amount between 12 and 25 Grams

Act





No CRI was used
Originally charged with second-degree possession
Convicted of a first-time drug offense

Other

A gun was not involved, nor were there children present
Most likely sentenced to the presumptive sentence

Example 4

Possess 24 grams of Meth
Criminal History Score of 1
First time drug offense
No weapon involved

State	Presumptive Sentence
 Minnesota	Prison 58 months Range 50-69
 Kansas	Probation 15 months Range 14-16
 Washington	Jail 16 months Range 12-20
 Oregon	Probation <91 days jail <180 days supervised